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No. 145

In the Supreme Court of the United States

OCTOBER TERM, 1954

CARLOS MARCELLO, PETITIONER

v.

EDWARD J. AHRENS, OFFICER IN CHARGE, UNITED STATES IMMIGRATION AND NATURALIZATION SERVICE (JOHN M. BONDS, OFFICER IN CHARGE, SUBSTITUTED IN PLACE AND STEAD OF EDWARD J. AHRENS)

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR RESPONDENT IN REPLY TO SUPPLEMENTAL PETITION FOR A WRIT OF CERTIORARI

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In his supplemental petition for a writ of certiorari petitioner contends that his status as a nondeportable resident alien was preserved despite enactment of the Immigration and Nationality Act of 1952 (hereinafter called the Act), since the savings clause of the Act shows that it was not the intention of Congress to alter that status (Supp.

Pet. 7). He relies upon the decisions in *United States ex rel. De Luca v. O'Rourke*, 213 F. 2d 759 (C.A. 8), and *Ex parte Robles-Rubio*, 119 F. Supp. 610 (N.D. Cal.). But those decisions, involving a problem clearly different from the one here, are no help to the petitioner.

The aliens in the cited cases had been convicted of narcotics law violations prior to the 1952 Act, but had been saved from deportation by recommendations of the sentencing judges against deportation. See 8 U.S.C., 1940 ed., 155(a). The difficult problem presented by the 1952 Act was this: Section 241(a)(4) of this Act provides for deportation of aliens convicted of crimes involving moral turpitude, in terms neither expressly including nor excluding narcotics violations; section 241(a)(11) provides for deportation of aliens violating the narcotics laws; and section 241(b) provides that a timely recommendation by the sentencing judge against deportation shall render section 241(a)(4) inapplicable. It was thus a close question whether a sentencing judge's recommendation prior to the 1952 Act, though not explicitly declared by the Act to remain effective to prevent deportation under section 241(a)(11), could nevertheless be given such effect on the ground that narcotics law violations were simply a special class of the crimes involving moral turpitude covered by section 241(a)(4). Resolving this neatly balanced issue in the aliens' favor, the courts in both cases found support for this result in the savings clause, section 405(a), of the 1952 Act.

In the instant case, on the other hand, there is no occasion to resort to the savings clause and no basis for petitioner's argument that he enjoys a non-deportable "status" preserved by this clause. Section 241(a)(11) clearly provides that an alien should be deported "who at any time has been convicted of a violation of any law or regulation relating to the illicit traffic in narcotic drugs, or who has been convicted of a violation of any law * * * governing * * * transportation, sale, exchange, dispensing, giving away, importation, exportation, or the possession * * * of * * * marihuana * * *." The Congressional intent to apply the statute to past offenses is made even clearer by Section 241 (d), which makes the provisions of 241 applicable even though the facts on which deportation is based "occurred prior to the date of enactment of this Act." These statutory provisions obviously cover petitioner's conviction in 1938 for two transfers of bulk marihuana.

Petitioner became bound by these statutory provisions which Congress was at liberty to enact, regardless of how long he had enjoyed a non-deportable status under previous law or how much he may have relied upon expected continuation of this status. It is well established that Congress has power to enact statutes for the deportation of aliens because of past misconduct, and such legislation does not involve criminal punishment to make effective the *ex post facto* clause of the Constitution. *Galvan* v. *Press*, 347 U.S. 522, 531; *Harisiades* v. *Shaughnessy*, 342 U.S. 580, 595; *Eichenlaub* v. *Shaughnessy*, 338 U.S. 521, 529; *Mahler* v.

Ebg, 264 U.S. 32, 39-40; *Ng Fung Ho* v. *White*, 259 U.S. 276, 280.

For the reasons stated, it is respectfully submitted that the supplemental petition does not disclose any point of substance to warrant granting of the petition for a writ of certiorari.

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SEPTEMBER, 1954.